

STATE OF MICHIGAN
COURT OF APPEALS

CARL SLOMCZENSKI and JOAN E.
SLOMCZENSKI,

UNPUBLISHED
March 10, 2011

Plaintiffs-Appellants,

v

ROY A. REDDEN and CHERYL A. REDDEN,

No. 291382
Oakland Circuit Court
LC No. 2007-084295-CH

Defendants-Appellees.

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

MEMORANDUM.

In this property dispute, plaintiffs appeal by leave granted the order denying their request for injunctive relief and the order awarding taxable costs to defendants. We reverse and remand for proceedings consistent with this opinion.

A trial court's decision regarding a request for injunctive relief is reviewed for an abuse of discretion. *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 8; 753 NW2d 595 (2008). An abuse of discretion occurs when the trial court's decision falls outside the range of reasonable and principled outcomes. *Id.* The scope of a party's rights to an easement presents an issue of fact, and a trial court's determination of the facts is reviewed for clear error. *Blackhawk Development Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). The trial court's dispositional ruling on equitable matters is subject to review de novo. *Id.*

In *Kratze v Independent Order of Oddfellows*, 442 Mich 136, 142 n 6; 500 NW2d 115 (1993), the Court held that the following factors may be considered when determining the propriety of issuing an injunction for encroachments on the land of another:

- (a) the nature of the interest to be protected,
- (b) the relative adequacy to the plaintiff of injunction and of other remedies,
- (c) any unreasonable delay by the plaintiff in bringing suit,
- (d) any related misconduct on the part of the plaintiff,

(e) the relative hardship likely to result to defendant if an injunction is granted and to plaintiff if it is denied,

(f) the interests of third persons and of the public, and

(g) the practicability of framing and enforcing the order or judgment.

In the present case, plaintiffs challenged defendants' use and maintenance of the mutual easement created by their predecessors in title, specifically, a deck used to moor boats. Despite expert testimony and testimony regarding the feasibility of modifying the deck, the trial court failed to make findings of fact, conclusions of law, and address the *Kratze* factors. Additionally, the trial exhibits were not preserved in the lower court record because of the retirement of the trial judge. Accordingly, we reverse and remand for a new trial.¹

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen M. Fort Hood

¹ In light of our conclusion that a new trial is warranted, we need not address the trial court's ruling regarding the prevailing party with regard to the deck furniture for purposes of awarding costs.